



## Notre Dame Law Review

---

Volume 14 | Issue 1

Article 2

---

11-1-1938

# Picketing

David Allyn Gelber

Follow this and additional works at: <http://scholarship.law.nd.edu/ndlr>



Part of the [Law Commons](#)

---

### Recommended Citation

David A. Gelber, *Picketing*, 14 Notre Dame L. Rev. 11 (1938).

Available at: <http://scholarship.law.nd.edu/ndlr/vol14/iss1/2>

This Article is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact [lawdr@nd.edu](mailto:lawdr@nd.edu).

## PICKETING

Picketing may be defined, generally, as a means by which an employee or a group of employees, or a labor organization, seeks to gain the sympathy of the employees of a particular industry, trade, or business and of the public, to a certain objective of the picketers. This objective may manifest itself either in an increase in wages, adjustment in the number of working hours, unionization, or betterment of working conditions. Pickets may utilize various means of publicizing their aims. The two most common methods are oral persuasion and the use of placards, signs, and handbills.

In order to fully understand the present law of picketing, a cursory examination of the labor laws and tendencies of the early English and American courts is necessary. In England a workingman struggling to improve his condition, was confronted until 1918 with laws limiting the amount of wages which he might demand.<sup>1</sup> Until 1824, he was punishable as a criminal if he combined with his fellow workmen to raise wages or shorten hours, or to affect the business in any way, even if there was no intent to resort to a strike.<sup>2</sup> Until the year 1871, members of a union who joined in persuading employees to leave work were liable criminally, even though the employees were not under contract and the persuasion was both peaceful and unattended by picketing; also, threatening to strike was a criminal act.<sup>3</sup> Not until four years later was the right of workers to combine for the purpose of attaining their ends, conceded in full. In 1875, Parliament declared that workmen combining in furtherance of a trade dispute should not be indictable for criminal conspiracy unless the

---

<sup>1</sup> 53 GEO. 111, c. 40; See also the STATUTES OF LABORERS, 25 Edw. 111, c. 1-7 (1351); 5 ELIZ. c. 4; 1 JAC. 1, c. 6.

<sup>2</sup> 5 GEO. 4, c. 95; *The King v. Journeymen Tailors of Cambridge*, 8 Modern 10; WRIGHT, *THE LAW OF CRIMINAL CONSPIRACIES*.

<sup>3</sup> CRIMINAL LAW AMENDMENT ACT, 34 & 35 Vic. c. 32, § 1 (1871); *Skinner v. Kitch*, 10 Cox C. C. 493, L. R. 2 Q. B. 393 (1867).

act done by one person was indictable as a crime.<sup>4</sup> After the promulgation of that statute, a combination of workmen to effect the ordinary objects of a strike was no longer a criminal offense. But picketing, although peaceful, in promoting a strike, was held to be illegal.<sup>5</sup> Not until 1906 was the ban on peaceful picketing and the use of pressure by a secondary strike or boycott on the employer, removed by the Trade Disputes Act.<sup>6</sup> In the United States, however, the legal right of workingmen to combine and strike in order to secure for themselves higher wages, shorter hours and better working conditions received early recognition.<sup>7</sup> But there was a great diversity of opinion as to the means by which, and upon whom pressure might be exerted in order to induce the employer to yield to the demands of the employee.

The great doctrinal controversy relating to picketing, classifies the jurisdiction into three groups. Illinois adopted the view that all picketing was illegal, irregardless of whether it was peaceful and carried on without intimidation.<sup>8</sup> The court argued that picketing was an invasion of the employer's and the non-picketing employee's interests, and hence would lead to violence and threats; therefore, all picketing must be enjoined. The Federal District Court in *Atchison, Topeka & Santa Fe Railway v. Gee*,<sup>9</sup> came to the same conclusion, but by a different line of reasoning. They maintained that the picketing of a premise during an industrial conflict was lawful intimidation. This view was shared by Arkansas, California, Massachusetts, Michigan, New Jersey, Idaho, Iowa, Kansas, and Washington.<sup>10</sup> Later, California and Illinois

---

<sup>4</sup> THE CONSPIRACY & PROTECTION OF PROPERTY ACT, 38 & 39 Vic. c. 86, § 3 (1875).

<sup>5</sup> 38 & 39 Vic. c. 86, § 7; *Lyons v. Wilkins* [1896] 1 Ch. 811, 826, 831.

<sup>6</sup> 6 Edw. VII, c. 47, § 2.

<sup>7</sup> *Commonwealth v. Hunt*, 4 Met. 111; *Carew v. Rutherford*, 106 Mass. 1 (1870).

<sup>8</sup> *Lyon & Healy v. Piano Workers Union*, 289 Ill. 176, 124 N. E. 443 (1919). But see *Shuster v. International Ass'n of Machinists*, 293 Ill. App. 177, 12 N. E. (2d) 50 (1937).

<sup>9</sup> 139 Fed. 582 (C. C. S. D. Iowa, 1905).

<sup>10</sup> *Pierce v. Stableman's Union*, 156 Cal. 70, 103 Pac. 324 (1909); *Hotel & Rest. Emp. v. Stathakis*, 135 Ark. 86, 205 S. W. 450 (1918); *Robison v. Hotel*

modified and lined up with Georgia, Indiana, Minnesota, Missouri, New Hampshire, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Utah, Virginia, Wisconsin, and Washington, in holding that peaceful picketing is lawful.<sup>11</sup>

Before delving into the judicial determinations, it would be best to consider the legislative movements in respect to picketing. The policy of suppression in England, has cropped up in this country in the nature of statutes making it a crime to picket or loiter about any business to dissuade others from becoming or remaining customers or employees. Alabama,<sup>12</sup> Colorado,<sup>13</sup> Kansas,<sup>14</sup> Nebraska,<sup>15</sup> Utah,<sup>16</sup> and Hawaii,<sup>17</sup> have passed such laws. Besides the statutes, certain city ordinances forbidding picketing have been enacted at one time or another in a few states.<sup>18</sup> The law, in twenty-one of the

---

& Rest. Emp., 35 Idaho 418, 207 Pac. 132 (1922); *Ellis v. Journeymen Barbers' Union*, 194 Iowa 1179, 191 N. W. 111 (1922); *Bull v. International Alliance*, 119 Kan. 713, 241 Pac. 459 (1925); *Vegelahn v. Guntner*, 167 Mass. 92, 44 N. E. 1077 (1896); *Baldwin Lumber Co. v. Brotherhood of Teamsters, etc.*, 91 N. J. Eq. 240, 109 Atl. 147 (1920); *Beck v. Railway Teamster's Protective Union*, 118 Mich. 497, 77 N. W. 13 (1888); *Danz v. American Federation of Musicians*, 133 Wash. 186, 233 Pac. 630 (1925).

<sup>11</sup> *Southern Cal. Iron & Steel Co. v. Amalgamated Ass'n*, 186 Cal. 604, 200 Pac. 1 (1921); *Jones v. Van Winkle Machine Works*, 131 Ga. 336, 62 S. E. 236 (1908); *Karges Furniture Co. v. Amalgamated, etc., Union*, 165 Ind. 421, 430, 75 N. E. 877 (1905); *Shuster v. International Ass'n of Machinists*, 293 Ill. App. 177, 12 N. E. (2d) 50 (1937); *Steffes v. Motion Picture Union*, 136 Minn. 200, 161 N. W. 524 (1917). See also Minn. Laws 1917, c. 493; *St. Louis v. Gloner*, 210 Mo. 502, 109 S. W. 30 (1908); *Riggs v. Cincinnati Waiters*, 5 Ohio N. P. 336, 8 Ohio S. & C. P. Dec. 565 (1922); *White Mountain Freezer Co. v. Murphy*, 78 N. H. 398, 101 Atl. 357 (1917); *Mills v. U. S. Printing Co.* 99 App. Div. 605, *aff'd*, 199 N. Y. 76, 92 N. E. 214 (1910); *Hydrox Ice Cream v. John Doe*, 289 N. Y. S. 683 (1936); *In Re Sweitzer*, 13 Okla. Cr. Rep. 151, 162 Pac. 1134 (1917); *Starr v. Laundry & Dry Cleaning Workers' Union*, 63 Pac. (2d) 1104 (Ore. 1936); *Kimbel v. Lumber & Saw Mill Workers Union et al.*, 65 Pac. (2d) 1066 (Wash. 1937); *American Furniture Co. v. I. B. of T. C.*, 268 N. W. 250 (Wis. 1936); *Everett Waddey Co. v. Richmond Typographical Union*, 105 Va. 188, 53 S. E. 273 (1906); *UTAH LAWS OF 1917*, c. 68.

<sup>12</sup> ALA. ANN. CODE (Michie, 1928) c. 91, § 3448.

<sup>13</sup> COLO. ANN. STAT. (Mills, 1930) § 464; Col. Stats. Ann. (1935) c. 97, § 90.

<sup>14</sup> KAN. REV. STAT. ANN. (1923) c. 44, art. 617; KAN. GEN. STAT. (1935) c. 44, art. 6, §§ 44-620; *State v. Personett*, 114 Kan. 680, 220 Pac. 520 (1923).

<sup>15</sup> NEB. COMP. STAT. (1929) c. 28, §§ 28-813.

<sup>16</sup> Utah Laws (1919) c. 19, §§ 1-2; repealed by Laws of 1937, c. 58.

<sup>17</sup> HAWAII REV. LAWS (1925) § 4360, p. 1923.

<sup>18</sup> *People v. Armentrout*, 1 Pac. (2d) 556 (Cal. Crim. App. 1931); *Watters v. Indianapolis*, 191 Ind. 671, 134 N. E. 482 (1922); *Ex parte Stout*, 82 Tex. Cr. App. 183 (1917).

remaining twenty-eight states having statutes dealing with picketing, despite the diverse phraseology, is that picketing is lawful if it does not tend to intimidate or use any means of force.<sup>19</sup>

The usual determinations in considering the status of picketing are: Is it for a legal purpose, and, Is it carried on by legal means? An injunction will issue if either the purpose or the means employed to attain that purpose are found to be in any way unlawful.<sup>20</sup> The old view still adhered to by a minority of states is that all picketing should be regarded as unlawful, and should be enjoined without regard to the purpose or means.<sup>21</sup> The idea behind this opinion is stated in a frequently quoted passage by Mr. Justice Mc Pherson, in the *Atchison* case:<sup>22</sup>

"There is and can be no such thing as peaceful picketing any more than there can be chaste vulgarity, or reasonable mobbing, or lawful lynching. When men want to converse or persuade they do not organize a picket line. When they only want to see who are at work, they go and see and then leave, and disturb no one physically or mentally." Another case, namely, *Schwartz & Jaffee v. Hillman*,<sup>23</sup> said that peaceful picketing exists mostly in the imagination.

Courts have expressed a marked diversity and contrariety of opinions as to what constitutes a lawful purpose to picket. The courts have generally held that certain subjects of industrial dispute are lawful ones, and have permitted picketing

---

<sup>19</sup> Arizona, Arkansas, California, Georgia, Indiana, Maryland, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Texas, Virginia, and West Virginia. The N. J. REV. STAT. (1937) § 2: 29- 77, may be taken as typical. "No restraining order or injunction shall be granted in any case involving or growing out of a labor dispute, enjoining any person or persons, singly or in concert, from quitting employment, or from peacefully, and without intimidation, persuading others to do so, or from peacefully, and without intimidation being on public ways to publicize the dispute, and peacefully and without intimidation persuading any person to work or abstain from working. . . ."

<sup>20</sup> OAKES, ORGANIZED LABOR AND INDUSTRIAL CONFLICTS 938, 939.

<sup>21</sup> *supra* note 10.

<sup>22</sup> 139 Fed. 582, 584 (C. C. S. D. Iowa 1905); see also *Keith Theatre v. Vachon*, 187 Atl. 692 (Me. 1936).

<sup>23</sup> 115 Misc. 61, 189 N. Y. S. 21 (1921).

where the object is to maintain or increase wages,<sup>24</sup> lessen the number of working hours,<sup>25</sup> or to secure better working conditions.<sup>26</sup> The courts seem to be hopelessly divided as to whether the closed shop is a legitimate subject of industrial dispute. New York,<sup>27</sup> Illinois,<sup>28</sup> California,<sup>29</sup> Minnesota,<sup>30</sup> and other states<sup>31</sup> have held such a strike legal; while Massachusetts,<sup>32</sup> Pennsylvania,<sup>33</sup> and New Jersey<sup>34</sup> have held otherwise. Strikes to secure recognition of the union, to force discharge of non-union men, or to effect a closed shop have been held illegal; and courts, in a majority of cases, have maintained that because of the tendency to give union labor a monopoly, it is not legitimate.<sup>35</sup> In *Sarros et al. v. Nouris et al.*,<sup>36</sup> the court said:

"The real object of the strike being as I have said to compel the complainants to unionize their business by subjecting it to control and domination by the labor organization, an object which the law does not recognize as legitimate, the complainants are entitled to protection against the continued picketing of their place of business by the de-

<sup>24</sup> *Jefferson & Indiana Coal Co. v. Marks*, 287 Pa. 171, 134 Atl. 430 (1927); *American Steel Foundries v. Tri-City Central Trades Council*, 25 U. S. 184 (1921); *Kemp v. Division No. 241*, 255 Ill. 213, 99 N. E. 389 (1912); *N. J. Painting Co. v. Local No. 26*, 95 N. J. Eq. 108, 122 Atl. 622 (1923).

<sup>25</sup> *Truax v. Bisbee Local No. 380, Cooks' and Waiters' Union*, 19 Ariz. 379, 171 Pac. 121 (1918); *Carter v. Oster*, 134 Mo. App. 146, 112 S. W. 995 (1908).

<sup>26</sup> *Cornnellier v. Haverhill Shoe Mfr's Asso.*, 221 Mass. 554, 109 N. E. 643 (1915); *Auburn Draying Co. v. Wardell*, 227 N. Y. 1, 124 N. E. 97 (1919).

<sup>27</sup> *Exchange Bakery and Restaurant v. Rifkin*, 245 N. Y. 260, 157 N. E. 130 (1927).

<sup>28</sup> *Kemp v. Division No. 241*, 255 Ill. 213, 99 N. E. 389 (1912).

<sup>29</sup> *Pierce v. Stablemen's Union*, 156 Cal. 70, 103 Pac. 324 (1909).

<sup>30</sup> *Grant Construction Co. v. St. Paul Bldg. Trades Council*, 136 Minn. 167, 161 N. W. 520 (1917).

<sup>31</sup> *Cohn & Roth Electric Co. v. Bricklayers' Union*, 92 Conn. 161, 101 Atl. 659 (1917); *Jetton Dekle Lumber Co. v. Mather*, 53 Fla. 969, 43 So. 590 (1907); *Roddy v. United Mine Workers*, 41 Okla. 621, 139 Pac. 126 (1914); *Clemmitt v. Watson*, 14 Ind. App. 38, 42 N. E. 367 (1895).

<sup>32</sup> *Plant v. Woods*, 176 Mass. 492, 57 N. E. 1011 (1900).

<sup>33</sup> *Bausbach v. Recff*, 244 Pa. 559, 91 Atl. 224 (1914).

<sup>34</sup> *Ruddy v. Plumbers*, 79 N. J. L. 467, 75 Atl. 742 (1910).

<sup>35</sup> *Moore v. Cooks' etc. Union*, 39 Cal. App. 538, 179 Pac. 417 (1919); *Nusbaum v. Retail Clerks' International Protective Asso.*, 227 Ill. App. 206, (1922); *Goyette v. C. V. Watson Co.*, 245 Mass. 577, 140 N. E. 285 (1923); *George Grant Constr. Co. v. St. Paul Bldg. Trades Council*, 136 Minn. 167, 161 N. W. 520 (1917); *Baldwin Lumber Co. v. Local No. 560*, 91 N. J. Eq. 240, 109 Atl. 147 (1920).

<sup>36</sup> 15 Del. Ch., 391, 138 Atl. 607, 611 (1927).

endants or their agents. This being true, the picketing which has been going on is unlawful, whether peaceful or otherwise. I am not, therefore, called upon to go into the question of whether picketing if peacefully conducted is permissible in labor controversies, for if the object of the picketers is unlawful, picketing of all kinds is likewise so."

Certain factual differentiations have been made in the elaborate treatment of this problem in the TEXAS LAW REVIEW<sup>37</sup> where it is stated:

"In order to fully comprehend the problem we should bear in mind the different factual set-ups in which it can present itself, viz., (1) where the employees strike to secure the adoption of the principles of the closed shop; (2) where the employees, aided by the union, strike to obtain the institution of a closed shop agreement; and (3) where the union, having no connection with the employees, calls a strike to force the employer to adopt a closed shop agreement."

The preferable and perhaps majority rule, holds that the purpose is legal when the employees strike, without the aid of a union, to secure the closed shop.<sup>38</sup> The objective of such a strike would ordinarily be for the betterment of the conditions of the worker, either in the matter of hours, wages, or better working conditions. This view is best seen in a New Jersey case<sup>39</sup> where the court offered:

"The principle of the closed shop, *i. e.*, the monopolization of the labor market has found no judicial sponsor. In whatever form organized labor has asserted it, whether to the injury of employer, or to labor, or to labor unions outside of the fold, the judiciary of the country has responded uniformly that it is inimical to the freedom of individual pursuit guaranteed by the fundamental law of the land, and contravenes public policy. On the other hand, public policy favors free competition, and the courts have been keen to recognize the right of organized labor to compete for work and wage and economic and social betterment, and to use its weapon, the strike, to realize its lawful as-

---

<sup>37</sup> Goodrich, *Injunction Against Picketing in Labor Disputes* (1937) 15 TEX. L. REV. 344, 350.

<sup>38</sup> Jetton-Dekle Lumber Co. v. Mather, 53 Fla. 969, 43 So. 590 (1907); Folsom v. Lewis, 203 Mass. 336, 94 N. E. 316 (1911); Lehigh Structural Steel Co. v. Atlantic Smelting & Ref. Works, 92 N. J. Eq. 131, 111 Atl. 376 (1920); Senn v. Tile Layers Protective Union, etc., 301 U. S. 468 (1937); Shuster v. International Ass'n of Machinists, 293 Ill. App. 177, 12 N. E. (2d) 50 (1937); Barracough, et al. v. Local Joint Executive Board, etc. (Superior ct. of Cal. 1938).

<sup>39</sup> Lehigh Structural Steel Co. v. Atlantic Smelting & Ref. Works, 92 N. J. Eq. 131, 11 Atl. 376 (1920).

pirations, but none has gone to the length of sanctioning a strike for a closed shop, which has for its object the exclusion from work of workmen who are not members of the organization."

Where the employees, aided by the union, strike for the adoption of a closed shop, the majority and most reasonable rule is that it is *not lawful*.<sup>40</sup> The same determination has been reached where the union, apart from its employees, calls a strike to secure a closed shop.<sup>41</sup> In *Keith Theatre v. Vachon*,<sup>42</sup> the plaintiff, lessee and operator of Keith's theatre complains in equity against certain men and unions, and seeks injunctive relief from the picketing of his theatre by the defendants, their agents and servants. No agreements were ever made with union representatives, and plaintiff conducted his theatre as an open shop, with wages lower than those required by the union, but as much as he could possibly pay. The plaintiff's employees were satisfied, but these outsiders started picketing "for the sole purpose of compelling plaintiff to adopt the closed shop and the union schedule of wages." An injunction was granted, and Mr. Judge Hudson said:<sup>43</sup>

"What justification or excuse is there for such interference? The defendants cannot justify as agents of the plaintiff's employees, for they had no authority. Their belief that it would be better for these employees to join the union, even if true, gives them no right to compel the employees to accept such an alleged betterment. We do not think it equitable to compel the employees and their employer, all satisfied that no wrong exists between them, to adopt and put into effect the desire of these defendants, who have no property or contractual rights to lose, as have the employer and its employees, if the injunction be denied. This court should neither deprive a laborer of his lawful employment nor force him to join a union at the behest of them who by some courts are called 'intermeddlers'."

The same court also said:

"Social welfare does not demand that non-related persons or organizations shall have the right, even by peaceful picketing, to attempt

<sup>40</sup> *Reynolds v. Davis*, 198 Mass. 294, 84 N. E. 457 (1908); *Cooks', Waiters' & Waitresses' Local Union v. Papageorge*, 230 S. W. 1086 (Tex. Civ. App. 1921).

<sup>41</sup> *Keith Theatre v. Vachon*, 187 Atl. 692 (Me. 1936); *Hitchman Coal & Coke Co. v. Mitchell*, 245 U. S. 229 (1917).

<sup>42</sup> *Keith Theatre v. Vachon*, 187 Atl. 692, 698 (Me. 1936).

<sup>43</sup> *id.* at 702.



to break down and destroy a satisfactory relationship between an employer and its employees in order to supplant it by another whose terms are satisfactory only to the dictators of it."

A fine distinction is propounded by the New Jersey courts on this doctrine. They say that picketing for a closed shop in a single factory is legal, but where the purpose of the picketing is to create a monopoly of labor in an entire industry, it is illegal. Also, where the motive of picketing in an entire industry is not to create such a monopoly, but is of a self-preservative nature, then it is legal.<sup>44</sup> In recapitulation, if a strike is precipitated for the paramount purpose of improving wages, working conditions or shortening of hours, it is without doubt, for a lawful object.

The next consideration is whether or not the means of picketing are lawful. The purpose, already regarded, *may be* legal, yet if the means are not, the courts will in accord, frown upon all activity. The doctrine is now well settled that picketing, if it is permitted at all, becomes unlawful, when subject to violence or intimidation; and all the jurisdictions where picketing is permissible are unanimous in maintaining that picketing to be lawful, must be peaceful.<sup>45</sup> The guide for distinguishing between peaceful and intimidating conduct has run the gamut, in decisions, from one extreme to another.

In 1921, the United States Supreme Court passed upon the legality of picketing in the cases of *American Steel Foundries v. The Tri-City Trades Council*,<sup>46</sup> and in *Truax v. Corrigan*.<sup>47</sup> The attitude of the court in the first instance was that not all picketing is necessarily lawful, but that it was permissible for members of a striking organization to have one picket at each entrance of the employer's plant to announce the purposes of the strike and to *peaceably* persuade

---

<sup>44</sup> The Four Plating Co., Inc. v. Mako, 122 N. J. Eq. 298 (1937).

<sup>45</sup> Rosen Western Slipper Manufacturing Co. v. United Shoe & Leather Workers Union, Local 48, et al. 287 Ill. App. 49 (1936); Restful Slipper Co., Inc. v. United Shoe & Leather Union et al., 174 Atl. 543 (N. J. Eq. 1934).

<sup>46</sup> 251 U. S. 184 (1921).

<sup>47</sup> 257 U. S. 213 (1921).

others to join them in the strike. In the *Truax case*, the court held an Arizona statute legalizing mass picketing to be unconstitutional. These cases are of great import in deciding the subsequent holdings by the state courts.

Attendance in the general neighborhood of the employer's place of business to spread information to those who resort there for employment, that a strike is taking place, is regarded as lawful,<sup>48</sup> and, it is even generally held that congregating in numbers to persuade others not to work is lawful,<sup>49</sup> as long as it is carried on so as not to intimidate those at work or those seeking employment.<sup>50</sup> Chief Justice Taft in his opinion in the *American Foundries* case<sup>51</sup> said:

"If however, the offer is declined, as it may rightfully be, then persistence, importunity, following and dogging become unjustifiable annoyance and obstruction which is likely soon to savor of intimidation."

At any rate, an injunction will readily be granted against force, threats, violence, or intimidation on the part of pickets in connection with a strike.<sup>52</sup> Also, when the picketing results in trespasses upon real or personal property, either actual or threatened, it will be enjoined.<sup>53</sup> In the case of *International Ticket Co. v. Wendrich, et al.*,<sup>54</sup> the complainant, engaged in the printing of tickets in Newark, New Jersey, was visited by individuals of the defendant labor unions who called a strike to force complainant to adopt a closed shop. A large majority

---

<sup>48</sup> Duplex Printing Press Co. v. Deering, 247 Fed. 722 (S. D. N. Y. 1917); Karges Furniture Co. v. Amalgamated Woodworkers' Union, 165 Ind. 421, 75 N. E. 877 (1905); Michaels v. Hillman, 112 Misc. 395, 183 N. Y. Supp. 195 (1920); Cumberland Glass Mfg. Co. v. Glass Bottle Blowers' Asso., 59 N. J. Eq. 49, 46 Atl. 208 (1899).

<sup>49</sup> Niles-Bement-Pond Co. v. Iron Molders' Union, 246 Fed. 851 (D. C. S. D. Ohio 1917); Albee & G. Co. v. Arei, 201 N. Y. 172 (1923); Keuffel & Esser v. International Asso., 93 N. J. Eq. 429, 116 Atl. 9 (1922).

<sup>50</sup> Church Shoe Co. v. Turner, 218 Mo. App. 516, 279 S. W. 232 (1926); Forstmann & H. Co. v. United Front Committee, 133 Atl. 202 (N. J. Eq. 1926).

<sup>51</sup> 25 U. S. 184 (1921).

<sup>52</sup> International Ladies' Garment Workers' Local Union v. Dorothy Frocks Co., 97 S. W. (2d) 379 (Tex. Civ. App. 1936); Iron Molders' Union v. Allis Chalmers Co., 166 Fed. 45 (C. C. A. 7th, 1908); Gassaway v. Borderland Coal Corp., 278 Fed. 56 (C. C. A. 7th, 1921).

<sup>53</sup> Scavenger Service Corporation v. Courtney, 85 Fed. (2d) 825 (C. C. A. 7th, 1936).

<sup>54</sup> 122 N. J. Eq. 222, 193 Atl. 808 (1937).

of the employees walked out, the plant was picketed continuously, and allegations of various acts of violence and intimidation were supported by affidavits. As a result of their violence, one of the complainant's trucks was driven into the Passaic River. The court held that an injunction would be granted to enjoin labor unions from picketing an employer's plant, as he had a property right in the services of his employee not to be infringed by outside influences and interference. This was decided under a New Jersey statute<sup>55</sup> which provides: "No restraining order or writ of injunction shall be granted . . . in any case involving . . . any person or persons . . . from peaceably . . . being upon any public street . . . for the purpose of obtaining or communicating information . . . or to peaceably and without threats or intimidation persuade any person . . . to work or abstain from working . . ." This court went still farther in saying, "It is rarely that a case arises where picketing is free from unlawful conduct," also citing *Truax v. Corrigan*<sup>56</sup> in that, " 'peaceful picketing' is a contradiction in terms."

To render picketing unlawful, it is unnecessary that it be accompanied by actual physical violence;<sup>57</sup> but it is sufficient, if there is an appearance and presence of intimidation,<sup>58</sup> or a threat of violence.<sup>59</sup> The courts are definitely divided, however, as to what constitutes intimidation. One case<sup>60</sup> presents the view:

"That which is persuasion, argument, and entreaty at a man's fire-side may easily become a threat and intimidation at the entrance of the works at which he is employed. It is not alone what is actually

---

<sup>55</sup> N. J. COMP. STAT. (Supp. 1930) § 107-131 a.

<sup>56</sup> 257 U. S. 312, 340 (1921).

<sup>57</sup> *Humphreys Mfg. Co. v. Mathias*, 12 Ohio S. & C. P. Dec. 517 (1902); *Jefferson & I Coal Co. v. Marks*, 287 Pa. 171, 134 Atl. 430 (1926).

<sup>58</sup> *Schlang v. Ladies' Waist Makers' Union*, 67 Misc. 221, 124 N. Y. Supp. 289 (1910).

<sup>59</sup> *Barr v. Essex Trades Council*, 53 N. J. Eq. 101, 30 Atl. 881 (1894); *Robinson v. Bryant*, 181 Ga. 722, 184 S. E. 298 (1936).

<sup>60</sup> *Brown Mfg. Co. v. Local Union No. 76*, 12 Ohio S. & C. P. Dec. 753 (1902).

said between parties that determines its meaning, but it is what is said, taken in connection with the manner in which it is said, the demeanor of the speakers, the environment of the parties, that gives what is said classification and meaning. The question in such a case is not so much what was actually said as what was understood by the parties to be meant by what was said."

When ordinary peaceful picketing develops into, and becomes persistent, annoying the workmen, and making their conditions miserable and intolerable, it becomes unlawful, and can be enjoined. Intimidation may be presumed from the number of people engaged in the activity,<sup>61</sup> and therefore, mass picketing may be said to be unlawful.<sup>62</sup> The following acts have been construed to amount to intimidation and are summarily enjoined: interference with employees who wish to work,<sup>63</sup> mass picketing,<sup>64</sup> and the carrying of a placard bearing the sign, "A scab lives here."<sup>65</sup>

It is generally permissible to use placards, signs, and handbills by pickets to accomplish their purpose, if they bear a truthful statement of the facts involved.<sup>66</sup> The rule in the Federal Courts is that where there is a labor dispute it "indicates that there is a disagreement and conflicting views. The Federal Courts are prohibited from interfering with a full and free advertising of those conflicting views."<sup>67</sup>

The right of peaceful picketing is by no means a constitutional right, and as has already been seen, it may be prohib-

---

<sup>61</sup> *Hoster Brewing Co. v. Gibling*, 14 Ohio S. & C. P. Dec. 305 (1903); *Rogers v. Evarts*, 17 N. Y. S. 264 (1891); *Keuffel & Esser v. International Assn.*, 93 N. J. Eq. 429, 116 Atl. 9 (1922).

<sup>62</sup> *Forstmann & H. Co. v. United Front Committee*, 99 N. J. Eq. 230, 133 Atl. 202 (1926); *Union Table & Spring Co., Inc. v. Perlow*, 93 N. Y. L. J. 892 (N. Y. 1935).

<sup>63</sup> *George Wallace Co. v. International Assn. of Mechanics*, 63 Pac. (2d) 1090 (Ore. 1936).

<sup>64</sup> *Ohrbach's Affiliated Stores Inc. v. "Jane Doe" et al.*, (N. Y. Sup. Ct. 1935).

<sup>65</sup> *State of Minnesota v. Archie Perry et al.*, 265 N. W. 302 (Minn. 1936).

<sup>66</sup> *Wise Shoe Co., Inc. v. Samuel S. Lowenthal*, 266 N. Y. 264, 194 N. E. 749 (1935); *The Driggs Dairy Farms, Inc. v. Milk Drivers & Dairy Employees' etc.*, 49 Ohio App. 303, 197 N. E. 250 (1935).

<sup>67</sup> *Cinderella Theatre Co., Inc. v. Sign Writers' Local Union No. 591*, 6 Fed. Supp. 164 (D. C. Mich. 1934).

ited by statute or ordinance.<sup>68</sup> A New York court held that peaceful picketing approaches so closely to wrongful interference with the constitutional guarantee of individual security of life and property that it can be done only under the strictest limitation.<sup>69</sup> The constitutional right of free speech has been held not to be violated by an ordinance forbidding the use of the sidewalks for picketing,<sup>70</sup> or by an ordinance prohibiting picketing entirely.<sup>71</sup> Such an ordinance has also been held not to infringe the constitutional right of peaceable assemblage and the use of the public streets, and it is not class legislation.<sup>72</sup>

*David Allyn Gelber.*

---

<sup>68</sup> *Hardie-Tynes Mfg. Co. v. Cruse*, 189 Ala. 66, 66 So. 567 (1914); *Thomas v. Indianapolis*, 195 Ind. 440, 145 N. E. 550 (1924).

<sup>69</sup> *Yates Hotel Co. v. Meyers*, 195 N. Y. S. 558 (1922).

<sup>70</sup> *Ex parte Stout*, 82 Tex. Cr. Rep. 183, 198 S. W. 967 (1917).

<sup>71</sup> *Thomas v. Indianapolis*, 195 Ind. 440, 145 N. E. 550 (1924).